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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,848	09/12/2003	Andrew W. Moehlenbrock	031456/259348	8549
826	7590	04/11/2007		
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER AUGHENBAUGH, WALTER	
			ART UNIT 1772	PAPER NUMBER
			MAIL DATE 04/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/661,848	Applicant(s) MOEHLENBROCK ET AL.	
	Examiner Walter B. Aughenbaugh	Art Unit 1772	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

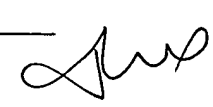
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____


JENNIFER MCNEIL
 SUPERVISORY PATENT EXAMINER

4/9/7

ADVISORY ACTION

1. Applicant's Request for Reconsideration filed March 28, 2007 has been received and considered by Examiner.

Response to Arguments

2. Applicant's arguments regarding the 35 U.S.C. 103 rejection of claims 1-6 and 8-17 have been fully considered but are not persuasive.

The water vapor permeable film that is taught at col. 2, lines 21-26 of Antoon (cited in rejection of record) is not required to include a filler by Antoon. The teaching of Antoon that Applicant cites (col. 3, lines 52-53) refers to the "CAP film", which is the film taught at col. 2, lines 28-30 of Antoon, not the water vapor permeable film that is taught at col. 2, lines 21-26. The microporous film taught at col. 2, lines 28-30 is the "CAP film" ("controlled atmosphere packaging" film, col. 1, lines 29-38) because Antoon teaches that the microporous film that is taught at col. 2, lines 21-26 "controls the O₂ and CO₂ levels at desired levels as usual" (col. 2, lines 28-30), where "controls" and "as usual" are clearly used to refer to the "CAP film" of Antoon.

Microporous films are disclosed as suitable for two distinct layers of Antoon: the water vapor permeable film (taught at col. 2, lines 21-26 and col. 3, lines 14-17) and the CAP film (taught at col. 2, lines 28-30 and col. 3, lines 52-56). The only film that is required to include filler is the CAP film taught at col. 2, lines 28-30 and col. 3, lines 52-56, but this is not the film that is relied upon in the rejection as is clear from the rejection of record, which refers to the "film that is ... highly permeable to water vapor" of Antoon, and which refers to col. 2, lines 21-26 as teaching this film. There is nothing in col. 4, lines 18-34 or in col. 4, lines 52-68 that

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requires that the water vapor permeable film of Antoon comprises filler. Col. 4, lines 18-34 discusses fillers that "can be used", and therefore does not require that all microporous films used in the invention of Antoon must include filler, and the teaching of Antoon at col. 3, lines 52-56 only requires that the microporous films that are used as the CAP film include filler, as discussed above. Col. 4, lines 52-68 merely discloses two examples which do not serve to limit the scope of the invention of Antoon. Furthermore, these two examples do not disclose a silicone-coated microporous film, so are not examples of the vapor permeable film taught at col. 2, lines 21-26 and col. 3, lines 14-17. The second example does not even disclose a microporous film, so this example does not provide an example of a microporous film suitable for the CAP film of Antoon.

Applicant has failed to recognize that microporous films are disclosed as suitable for two distinct layers of Antoon, and that Antoon requires filler as a component of the film only for the CAP film, which is not the layer that is relied upon in the rejection of record (the water vapor permeable film as discussed above). Silicone-coated microporous film are only taught by Antoon as being suitable for the water vapor permeable film. Furthermore, Antoon does not require that silicone-coated microporous film comprise filler. The film taught by Forte and Antoon as proposed in the rejection of record results in a film that is free of filler because Antoon does not teach that the water vapor permeable film comprises filler. Antoon only requires that the CAP film (which is not the water vapor permeable film, col. 2, lines 21-37) comprises filler.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-

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1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Walter B. Aughenbaugh
04/06/07

WBA



JENNIFER MCNEIL
SUPERVISOR

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